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Attorney for Plaintiff
IO GROUP, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IO GROUP, INC. d/b/a TITAN
MEDIA,
Plaintiff,

vs.

ELVIS BARNETT, CHERYL
CALHOUN, ANNA ARAGON, KANG
LI, YURY KALENIK, LEE WILSON,
MICHAEL WELCH, DAVID
SALARY, FERNANDO OBERTI,
LASONYA PITTMAN, PETE
WESSON, MONICA PAGE, MAYRA
GONZALEZ, GORDON J. BROOM,
ROGER WOOWARD, JIM SORIANO,
JOHN MONTGOMERY, PEDRO
OLIVERA, MIKE MURRAY,
TIFFANY KENT, JOHN CAIRE,
DAVID HOLIHAN, RICHARD ZHU,
JERRY GUTHRIE, LISELOTTE
ACEVEDO, and YOUNG LIN,

Defendants.

CASE NO.: 10-4378 (EDL)

**SEPARATE CASE MANAGEMENT
CONFERENCE STATEMENT**

Date: June 14, 2011

Time: 3:00 p.m.

Ct.Rm: E, 15th Fl.

Plaintiff files this Separate Case Management Conference Statement because of
four remaining Defendants, three are *pro per* and one has not yet been served.

As a preliminary matter, since the filing of the First Amended Complaint, Plaintiff has voluntarily dismissed 17 of the 26 named Defendants. Of the remaining 9 Defendants, 5 have defaulted¹ and 3 have filed documents with the Court. The one remaining Defendant, Jerry Guthrie, is represented by counsel but did not authorize counsel to accept service of process. Plaintiff continues to attempt to serve Mr. Guthrie.

1. Jurisdiction and Service:

Jurisdiction -

Plaintiff alleges this Court has subject matter jurisdiction over Plaintiff's claims for copyright infringement and related claims pursuant to 17 U.S.C. §§ 101, *et. seq.*, and 28 U.S.C. §§ 1331 and 1338(a) and that the Court has supplemental jurisdiction over Plaintiffs' claims arising under the laws of California pursuant to 28 U.S.C. § 1367(a) because these claims are so related to Plaintiff's claims under Federal Law that they form part of the same case or controversy and derive from a common nucleus of operative facts.

Plaintiff alleges personal jurisdiction over the Defendants based on the fact that the Defendants engaged in an intentional tort (copyright infringement) knowing the effect of their illegal actions would be suffered in this jurisdiction. Thus, Plaintiff can establish personal jurisdiction based on the effects doctrine.

¹ In its Notice of Default, Plaintiff identified six defendants who it believed had defaulted, but will Amend the Notice of Default to eliminate Roger Woodward whom Plaintiff has voluntarily dismissed from the matter.

1 Defendant David Salery filed a motion to dismiss based on lack of personal
2 jurisdiction, although he failed to properly notice the motion.

3 **Service –**

4
5 At the outset of this case Plaintiff only knew the ip address associated with the
6 alleged infringing activity. Therefore, Plaintiff requested leave from the Court to
7 subpoena AT&T Internet Services to obtain the names of the subscribers to whom AT&T
8 had assigned the relevant IP address. After AT&T identified the subscribers, Plaintiff
9 contacted the subscribers by letter in order open settlement discussions.

10
11 Plaintiff later Amended the Complaint to name twenty-seven defendants. After
12 further settlement negotiations, Plaintiff voluntarily dismissed 17 of the 26 named
13 defendants. Only one Plaintiff remains to be served – Jerry Guthrie, who although
14 represented by counsel, refused to authorize his counsel to accept service of the
15 Summons and Amended Complaint.

16
17 **2. Legal Issues:**

18
19 This matter consists primarily of straight forward claims of direct copyright
20 infringement against each Defendant.

21 **3. Motions:**

22
23 The only current motion is David Salery's un-noticed Motion to Dismiss for Lack
24 of Personal Jurisdiction.

25 Plaintiff intends to bring a motion for summary judgment on its copyright
26 infringement claim against Myra Gonzalez as she has admitted to facts that establish her
27 liability.
28

1 **4. Amended Pleadings:**

2 No Amended pleadings are currently contemplated.

3 **5. Evidence Preservation:**

4 Plaintiff is preserving all relevant evidence and has notified each Defendants of
5
6 their responsibility to do the same.

7 **6. Disclosures:**

8 No disclosures have been exchanged.

9 **7. Discovery:**

10 Plaintiff has taken early discovery in the form of a subpoena to AT&T to identify
11
12 the subscribers. The parties have not yet taken any additional discovery. Plaintiff sees
13
14 no reason to limit or modify the discovery rules.

15 **8. Class Actions:**

16 This matter is not a class action.

17 **9. Related Cases:**

18 Currently, there are no cases related to this matter.

19 **10. Relief:**

20 Plaintiff seeks monetary damages of \$150,000 based on Defendants' willful
21
22 infringement of its works, and a permanent injunction prohibiting Defendants from
23
24 further infringement of Io Group's registered works. Plaintiff also seeks an award of
25
26 attorneys' fees and costs pursuant to section 505 of the Copyright Act, 17 U.S.C. § 505.

27 **11. Settlement and ADR:**

1 Plaintiff presented each defendant with an early settlement offer which each
2 rejected. Settlement discussions with some one defendant are ongoing.

3
4 **12. Consent to Magistrate Judge for All Purposes:**

5 Plaintiff consented to have the matter referred to a magistrate judge for all
6 purposes. Defendants have not made an election.

7
8 **13. Other References:**

9 Parties do not believe the matter is suitable for any other references.

10
11 **14. Narrowing of Issues:**

12 The parties have not had an opportunity to enter discussions for the purpose of
13 narrowing issues.

14
15 **15. Expedited Schedule:**

16 Parties do not believe the matter is suitable to be handled on an expedited basis.

17
18 **16. Scheduling:**

19 Plaintiff believes it is premature to suggest scheduling dates, since Defendants
20 have not had an opportunity for input.

21
22 **17. Trial:**

23 Plaintiff has demanded a jury trial. Plaintiff expects a trial would last three to five
24 days excluding jury selection and voir dire.

25
26 **18. Disclosure of Non-party Interested Entities or Persons:**

27 Plaintiff filed its Certification of Interested Entities.

28 Pursuant to Civil L.R. 3-16, Plaintiff certifies that the following is a complete list
of persons or entities that (i) have a financial interest in the subject matter in controversy

1 or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter
2 or in a party that could be substantially affected by the outcome of this proceeding:

3 Io Group, Inc.

4 Bruce Lahey – majority shareholder of Io Group, Inc.

5 Brian Ashby – minority shareholder of Io Group, Inc.

6
7 **19. Other Matters:**

8 None.

9
10
11 Respectfully Submitted,

12 */s/ D. Gill Sperlein*

13
14 Dated: June 7, 2011

15 _____
16 D. Gill Sperlein
17 THE LAW OFFICE OF D. GILL SPERLEIN
18 Attorney for Plaintiff
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